

REMARKS

Claim Status

Claims 1-2 and 20-37 are pending in the present application. No additional claims fee is believed to be due.

Claims 3-7 and 9-19 are cancelled without prejudice.

Claims 1 and 2 are amended. Support for claims 1 and 2 can be found, for example, at pages 3-9 and Example I.

Claims 20-37 are added. Support for claim 20 can be found, for example at pages 8-9 of the specification. Support for claims 21-23 can be found, for example, at page 7 of the specification. Support for claim 24-26 and 37 can be found, for example, at pages 3-5 of the specification. Support for claim 27 can be found, for example, at pages 5-7 of the specification. Support for claim 28 can be found, for example, at pages 18-19 of the specification. Support for claims 29-31 can be found, for example, at pages 7-8 of the specification. Support for claims 32-35 can be found, for example, at page 17 of the specification. Support for claim 36 can be found, for example, on page 20 of the specification.

It is believed these changes do not involve any introduction of new matter. Consequently, entry of these changes is believed to be in order and is respectfully requested.

Rejection Under 35 USC §103(a) over Barkalow et al. in view of Yotka et al.

Claims 1-7 and 9-13 were rejected under 35 USC 103(a) as being unpatentable over Barkalow et al. U.S. Patent App. No. 2002/0131990 (Barkalow) in view of Yotka et al. US Patent No. 5,458,892 (Yotka). The Office Action stated Barkalow discloses an edible film composition comprising bulk filler agents, film forming agents, plasticizing agents and flavoring agents. Additionally, the Office Action stated Yotka teaches indigestible dextrin as a known bulk filling agent and that one of ordinary skill in the art would have been motivated by Yotka to substitute indigestible dextrin as the bulk filler in the composition of Barkalow with a reasonable expectation of successfully obtaining the functional edible film of Barkalow. Applicants traverse this rejection and respectfully request reconsideration.

Applicants submit that the Office Action fails to show a teaching in Barkalow relating to all of the elements of amended independent claim 1. For example, independent claim 1 recites an edible film composition comprising from about 2% to about 75% of polyvinyl pyrrolidone and a tooth whitening agent. There is nothing in the Office action relating to these amended elements. Additionally, there is no showing in the Office Action of those elements in Yotka either. Thus, Yotka fails to cure the deficiencies of Barkalow. As Examiner is aware, references relied upon to support a rejection under 35 U.S.C. §103 must provide an enabling disclosure, i.e. they must place the claimed invention in the possession of the public, *In re Payne*, 203 USPQ 245 (CCPA 1979). As the Office Action has failed to point to any teachings in Barkalow in view of Yotka relating to the elements of claim 1 as stated above, Applicants submit that claim 1 and the claims dependent thereon are non-obvious over Barkalow in view of Yotka.

Moreover, Applicants submit the references cannot be combined as stated in the Office Action as Barkalow "[o]ther edible materials such as modified starches and celluloses have been employed as a replacement for pullulan within edible film compositions. Unfortunately, such materials typically lack one or more of pullulan's desirable film properties. Those properties include, for example: rapid dissolution, flexibility, non-hygroscopicity, clean mouth feel, clean flavor and ease of manufacture" (paragraph 004). Thus, contrary to the statement in the Office Action, there would not be a reasonable expectation of success in using indigestible dextrin (modified starch) from Yotka in Barkalow as Barkalow says that it will not work. As Examiner is aware, it is error to find obviousness when a reference diverges from and teaches away from the invention at hand, *In re Fine*, 5 USPQ2d 1596 (Fed. Cir. 1988). As such, Applicants submit there is no prima facie case of obviousness based on the combination of Barkalow and Yotka. In light of the above, Applicants submit that claim 1 and those claims dependent thereon are non-obvious over Barkalow in view of Yotka and respectfully request reconsideration.

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Conclusion

This response represents an earnest effort to place the present application in proper form and to distinguish the invention as claimed from the applied documents. In view of the foregoing, entry of the amendments presented herein, reconsideration of this application, and allowance of all pending claims are respectfully requested.

Respectfully submitted,

THE PROCTER & GAMBLE COMPANY

By /Carrie M. Benjamin/
Carrie M. Benjamin
Registration No. 58,861
(513) 983-3449

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Customer No. 27752